



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 31381558

Date: JUNE 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a model, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish he satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed to have satisfied five of these criteria, but the Director determined the Petitioner fulfilled only two: judging the work of others at 8 C.F.R. § 204.5(h)(3)(iv) and display of his work at 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that he meets two additional categories of evidence.<sup>1</sup>

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).*

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.<sup>2</sup> The published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work.<sup>3</sup> USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.<sup>4</sup>

The Petitioner submitted a [redacted] 2015 article, entitled [redacted] in [redacted] [redacted] of *The Himalayan Times*, but this material only briefly mentions him. The Petitioner also presented what he claims is a translated document from Press Council Nepal listing

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<sup>1</sup> In his appeal brief, the Petitioner does not challenge the Director's determination that he did not meet the commercial successes in the performing arts criterion at 8 C.F.R. § 204.5(h)(3)(x). We consider the Petitioner's prior eligibility claims not raised or contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

<sup>2</sup> *See generally* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

multiple newspapers and categorizing them by district, type, level, and class, but this list does not offer specific circulation statistics for *The Himalayan Times* or its [REDACTED]. *The Himalayan Times* is listed at the top as being a national level Class A daily newspaper. The original Nepali language document, however, contains no identifiers indicating that it was issued by Press Council Nepal. Without further information and evidence, the Petitioner has not demonstrated that the [REDACTED] of *The Himalayan Times* is a form of major media.

In addition, the Petitioner provided two articles in *World of Women*, entitled [REDACTED] [REDACTED] ([REDACTED] 2015) and [REDACTED] ([REDACTED] 2016), but their author was not identified, and they did not discuss his modeling work. Further, the Petitioner has not shown that *World of Women* qualifies as a form major media.

For the aforementioned reasons, the Petitioner has not established that he meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(b)(3)(ix).

For this criterion, USCIS determines whether the person's salary or remuneration is high relative to the compensation paid to others working in the field.<sup>5</sup>

The Petitioner submitted letters from [REDACTED] and [REDACTED] attesting to his compensation from 2013 until 2020. He also provided his contracts with [REDACTED] and [REDACTED] for 2013 to 2020. The record, however, does not include tax records or other evidence to corroborate the Petitioner's receipt of the specified compensation. In addition, the Petitioner presented an article from SalaryExplorer.com, entitled "Fashion Model Average Salary in Nepal 2023," and an article from WorldSalaries.com, entitled "Average Fashion Model Salary in Nepal for 2023," but he did not submit evidence of comparable remuneration data from 2013 to 2020. Nor has the Petitioner demonstrated the validity of the 2023 salary information from SalaryExplorer.com and WorldSalaries.com. To meet this criterion, the Petitioner must show that he received a high salary or other significantly high remuneration in relation to other models during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Mumi v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The nonsynchronous comparison of the Petitioner's modeling compensation is not sufficient to demonstrate that he has commanded a high salary or other significantly high remuneration for services in relation to others in the field. Accordingly, the Petitioner has not established that he fulfills this criterion.

### III. CONCLUSION

While the Petitioner meets the display and judging criteria, he has not established he satisfies the criteria relating to published material or high remuneration. Because the Petitioner's inability to meet

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<sup>5</sup> See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

three of the initial criteria is dispositive of his appeal, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We therefore reserve this issue.<sup>6</sup>

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability,”); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at \*5 (D.D.C. June 8, 2021), *aff’d*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at \*1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.<sup>7</sup> Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

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<sup>6</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

<sup>7</sup> For example, the record lacks evidence showing that the Petitioner has “sustained” national acclaim as a model after January 2020. His published material, judging participation, modeling displays, and contracts all pre-date January 2020.